

## Office of the Secretary, Commerce

## § 19.11

entities may offset a payment internally or make an offset request directly to a Federal payment agency. If the Federal payment agency is another Commerce entity, the Commerce entity making the request shall do so through the Deputy Chief Financial Officer as described in § 19.20(c) of this Part.

(2) At least thirty (30) days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this Part. When referring a Commerce debt for offset under this paragraph (b), Commerce entities making the request will certify, in writing, that the Commerce debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Commerce entities will certify their compliance with these regulations concerning administrative offset. See 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in § 19.4 of this Part shall explain to the debtor how to request an administrative review of a Commerce entity's determination that the debtor owes a Commerce debt and how to present evidence that the Commerce debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the Commerce debt, the debtor may seek a review of the terms of repayment. In most cases, Commerce entities will provide the debtor with a "paper hearing" based upon a review of the written record, including documentation provided by the debtor. Commerce entities shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the Commerce debt and the Commerce entity determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the Commerce debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although Commerce entities should carefully document all significant matters discussed at the hearing.

Commerce entities may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), Commerce entities may effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in § 19.4 of this Part, or completing the procedures described in paragraph (b)(2) and (c) of this section. Commerce entities shall give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government. Legal counsel approval to effect such pre-notice offset is required as described in Department of Commerce Credit and Debt Management Operating Standards and Procedures Handbook (currently at <http://www.osec.doc.gov/ofm/credit/cover.htm>).

### **§ 19.11 How will Commerce entities use tax refund offset to collect a Commerce debt?**

(a) *Tax refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect Commerce debts by the offset of tax refunds and other Federal payments. See § 19.9(c) of this Part. If not already transferred to the Financial Management Service under § 19.9 of this Part, Commerce entities will refer to the Treasury Offset Program any past-due, legally enforceable Commerce debt for collection by tax refund offset. See 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least sixty (60) days prior to referring a Commerce debt to the Treasury Offset Program, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this Part. Commerce entities will certify to the Financial Management Service's Treasury Offset Program, in writing, that the Commerce debt is past due and legally enforceable in the amount submitted and that the Commerce entities have made reasonable efforts to obtain payment of the Commerce debt as described in 31 CFR 285.2(d). In addition, Commerce entities will certify their compliance

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with all applicable due process and other requirements described in this Part and other Federal laws. See 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in § 19.4 of this Part shall provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in § 19.10(c) of this Part. Commerce entities may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

### **§ 19.12 How will Commerce entities offset a Federal employee's salary to collect a Commerce debt?**

(a) *Federal salary offset.* (1) Salary offset is used to collect debts owed to the United States by Commerce Department and other Federal employees. If a Federal employee owes a Commerce debt, Commerce entities may offset the employee's Federal salary to collect the Commerce debt in the manner described in this section. For information on how a Federal agency other than a Commerce entity may collect debt from the salary of a Commerce Department employee, see §§ 19.20 and 19.21, subpart C, of this Part.

(2) Nothing in this Part requires a Commerce entity to collect a Commerce debt in accordance with the provisions of this section if Federal law allows otherwise. See, for example, 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) Commerce entities may use the administrative wage garnishment procedure described in § 19.13 of this Part to collect a Commerce debt from an individual's non-Federal wages.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in § 19.9(a) of this Part, Commerce entities will refer Commerce debts to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, Commerce entities should attempt salary offset through the Treasury Offset Program before applying the procedures in para-

graph (c) of this section. See 5 CFR 550.1108 and 550.1109.

(c) *Non-centralized salary offset for Commerce debts.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, Commerce entities may collect delinquent Commerce debts through non-centralized salary offset. See 5 CFR 550.1109. In these cases, Commerce entities may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent Commerce debt owed by a Federal employee. If the Federal payment agency is another Commerce entity, the Commerce entity making the request shall do so through the Deputy Chief Financial Officer as described in § 19.20(c) of this Part. At least thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, Commerce entities will send notice to the debtor in accordance with the requirements of § 19.4 of this Part. When referring a Commerce debt for offset, Commerce entities will certify to the payment agency, in writing, that the Commerce debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, Commerce entities will certify that all due process and other prerequisites to salary offset have been met. See 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due process and other prerequisites for salary offset.

(d) *When prior notice not required.* Commerce entities are not required to provide prior notice to an employee when the following adjustments are made by a Commerce entity to a Commerce employee's pay:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the